

AMENDED IN SENATE APRIL 29, 2009

AMENDED IN SENATE APRIL 20, 2009

SENATE BILL

No. 413

Introduced by Senator Ducheny

February 26, 2009

An act to amend Section 13260 of the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 413, as amended, Ducheny. Waste discharge requirements: fees.

The Porter-Cologne Water Quality Control Act, with certain exceptions, requires a waste discharger to pay an annual fee established by the State Water Resources Control Board. The act requires the total amount of fees collected to equal that amount necessary to recover certain costs relating to the administration of waste discharge requirements. Revenues generated by the imposition of the fee are deposited in the Waste Discharge Permit Fund for expenditure, upon appropriation by the Legislature, for specified water quality purposes.

This bill, for the purpose of calculating the annual fee, would specify that recoverable costs also include costs incurred by the State Water Resources Control Board and the California regional water quality control boards in the preparation of water quality control plans, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13260 of the Water Code is amended to
2 read:

3 13260. (a) Each of the following persons shall file with the
4 appropriate regional board a report of the discharge, containing
5 the information which may be required by the regional board:

6 (1) Any person discharging waste, or proposing to discharge
7 waste, within any region that could affect the quality of the waters
8 of the state, other than into a community sewer system.

9 (2) Any person who is a citizen, domiciliary, or political agency
10 or entity of this state discharging waste, or proposing to discharge
11 waste, outside the boundaries of the state in a manner that could
12 affect the quality of the waters of the state within any region.

13 (3) Any person operating, or proposing to construct, an injection
14 well.

15 (b) No report of waste discharge need be filed pursuant to
16 subdivision (a) if the requirement is waived pursuant to Section
17 13269.

18 (c) Each person subject to subdivision (a) shall file with the
19 appropriate regional board a report of waste discharge relative to
20 any material change or proposed change in the character, location,
21 or volume of the discharge.

22 (d) (1) (A) Each person who is subject to subdivision (a) or
23 (c) shall submit an annual fee according to a fee schedule
24 established by the state board.

25 (B) The total amount of annual fees collected pursuant to this
26 section shall equal that amount necessary to recover costs incurred
27 in connection with the issuance, administration, reviewing,
28 monitoring, and enforcement of waste discharge requirements and
29 waivers of waste discharge requirements, and the costs described
30 in clause (ii) of subparagraph (C).

31 (C) (i) Recoverable costs may include, but are not limited to,
32 costs incurred in reviewing waste discharge reports, prescribing
33 terms of waste discharge requirements and monitoring
34 requirements, enforcing and evaluating compliance with waste
35 discharge requirements and waiver requirements, conducting
36 surface water and groundwater monitoring and modeling, analyzing
37 laboratory samples, and reviewing documents prepared for the

1 purpose of regulating the discharge of waste, and administrative
2 costs incurred in connection with carrying out these actions.

3 (ii) Recoverable costs may also include costs incurred in the
4 preparation of water quality control plans pursuant to Section
5 13170 or 13240. ~~Any portion of the fee calculated to recover the~~
6 ~~costs described in this clause shall be calculated in a manner that~~
7 ~~ensures the feepayers are not paying disproportionately more than~~
8 ~~their impacts or benefits justify.~~

9 (D) In establishing the amount of a fee that may be imposed on
10 any confined animal feeding and holding operation pursuant to
11 this section, including, but not limited to, any dairy farm, the state
12 board shall consider all of the following factors:

13 (i) The size of the operation.

14 (ii) Whether the operation has been issued a permit to operate
15 pursuant to Section 1342 of Title 33 of the United States Code.

16 (iii) Any applicable waste discharge requirement or conditional
17 waiver of a waste discharge requirement.

18 (iv) The type and amount of discharge from the operation.

19 (v) The pricing mechanism of the commodity produced.

20 (vi) Any compliance costs borne by the operation pursuant to
21 state and federal water quality regulations.

22 (vii) Whether the operation participates in a quality assurance
23 program certified by a regional water quality control board, the
24 state board, or a federal water quality control agency.

25 (2) (A) Subject to subparagraph (B), any fees collected pursuant
26 to this section shall be deposited in the Waste Discharge Permit
27 Fund, which is hereby created. The money in the fund is available
28 for expenditure by the state board, upon appropriation by the
29 Legislature, solely for the purposes of carrying out this division.

30 (B) (i) Notwithstanding subparagraph (A), the fees collected
31 pursuant to this section from stormwater dischargers that are
32 subject to a general industrial or construction stormwater permit
33 under the national pollutant discharge elimination system (NPDES)
34 shall be separately accounted for in the Waste Discharge Permit
35 Fund.

36 (ii) Not less than 50 percent of the money in the Waste
37 Discharge Permit Fund that is separately accounted for pursuant
38 to clause (i) is available, upon appropriation by the Legislature,
39 for expenditure by the regional board with jurisdiction over the

1 permitted industry or construction site that generated the fee to
2 carry out stormwater programs in the region.

3 (iii) Each regional board that receives money pursuant to clause
4 (ii) shall spend not less than 50 percent of that money solely on
5 stormwater inspection and regulatory compliance issues associated
6 with industrial and construction stormwater programs.

7 (3) Any person who would be required to pay the annual fee
8 prescribed by paragraph (1) for waste discharge requirements
9 applicable to discharges of solid waste, as defined in Section 40191
10 of the Public Resources Code, at a waste management unit that is
11 also regulated under Division 30 (commencing with Section 40000)
12 of the Public Resources Code, shall be entitled to a waiver of the
13 annual fee for the discharge of solid waste at the waste management
14 unit imposed by paragraph (1) upon verification by the state board
15 of payment of the fee imposed by Section 48000 of the Public
16 Resources Code, and provided that the fee established pursuant to
17 Section 48000 of the Public Resources Code generates revenues
18 sufficient to fund the programs specified in Section 48004 of the
19 Public Resources Code and the amount appropriated by the
20 Legislature for those purposes is not reduced.

21 (e) Each person discharges waste in a manner regulated by this
22 section shall pay an annual fee to the state board. The state board
23 shall establish, by regulation, a timetable for the payment of the
24 annual fee. If the state board or a regional board determines that
25 the discharge will not affect, or have the potential to affect, the
26 quality of the waters of the state, all or part of the annual fee shall
27 be refunded.

28 (f) (1) The state board shall adopt, by emergency regulations,
29 a schedule of fees authorized under subdivision (d). The total
30 revenue collected each year through annual fees shall be set at an
31 amount equal to the revenue levels set forth in the Budget Act for
32 this activity. The state board shall automatically adjust the annual
33 fees each fiscal year to conform with the revenue levels set forth
34 in the Budget Act for this activity. If the state board determines
35 that the revenue collected during the preceding year was greater
36 than, or less than, the revenue levels set forth in the Budget Act,
37 the state board may further adjust the annual fees to compensate
38 for the over and under collection of revenue.

39 (2) The emergency regulations adopted pursuant to this
40 subdivision, any amendment thereto, or subsequent adjustments

1 to the annual fees, shall be adopted by the state board in accordance
2 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
3 Division 3 of Title 2 of the Government Code. The adoption of
4 these regulations is an emergency and shall be considered by the
5 Office of Administrative Law as necessary for the immediate
6 preservation of the public peace, health, safety, and general welfare.
7 Notwithstanding Chapter 3.5 (commencing with Section 11340)
8 of Part 1 of Division 3 of Title 2 of the Government Code, any
9 emergency regulations adopted by the state board, or adjustments
10 to the annual fees made by the state board pursuant to this section,
11 shall not be subject to review by the Office of Administrative Law
12 and shall remain in effect until revised by the state board.

13 (g) The state board shall adopt regulations setting forth
14 reasonable time limits within which the regional board shall
15 determine the adequacy of a report of waste discharge submitted
16 under this section.

17 (h) Each report submitted under this section shall be sworn to,
18 or submitted under penalty of perjury.

19 (i) The regulations adopted by the state board pursuant to
20 subdivision (f) shall include a provision that annual fees shall not
21 be imposed on those who pay fees under the national pollutant
22 discharge elimination system until the time when those fees are
23 again due, at which time the fees shall become due on an annual
24 basis.

25 (j) Any person operating or proposing to construct an oil, gas,
26 or geothermal injection well subject to paragraph (3) of subdivision
27 (a), shall not be required to pay a fee pursuant to subdivision (d),
28 if the injection well is regulated by the Division of Oil and Gas of
29 the Department of Conservation, in lieu of the appropriate
30 California regional water quality control board, pursuant to the
31 memorandum of understanding, entered into between the state
32 board and the Department of Conservation on May 19, 1988. This
33 subdivision shall remain operative until the memorandum of
34 understanding is revoked by the state board or the Department of
35 Conservation.

36 (k) In addition to the report required by subdivision (a), before
37 any person discharges mining waste, the person shall first submit
38 both of the following to the regional board:

39 (1) A report on the physical and chemical characteristics of the
40 waste that could affect its potential to cause pollution or

1 contamination. The report shall include the results of all tests
2 required by regulations adopted by the board, any test adopted by
3 the Department of Toxic Substances Control pursuant to Section
4 25141 of the Health and Safety Code for extractable, persistent,
5 and bioaccumulative toxic substances in a waste or other material,
6 and any other tests that the state board or regional board may
7 require, including, but not limited to, tests needed to determine
8 the acid-generating potential of the mining waste or the extent to
9 which hazardous substances may persist in the waste after disposal.
10 (2) A report that evaluates the potential of the discharge of the
11 mining waste to produce, over the long term, acid mine drainage,
12 the discharge or leaching of heavy metals, or the release of other
13 hazardous substances.
14 (l) Except upon the written request of the regional board, a report
15 of waste discharge need not be filed pursuant to subdivision (a) or
16 (c) by a user of recycled water that is being supplied by a supplier
17 or distributor of recycled water for whom a master recycling permit
18 has been issued pursuant to Section 13523.1.